

REFERENCE TITLE: energy cost saving measures; requirements

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

## HB 2430

Introduced by  
Representatives Mason, Chase: Boone, Burns J, Downing, Jones, Kirkpatrick,  
Knaperek, Yarbrough

AN ACT

AMENDING SECTIONS 15-213.01, 34-452, 34-454 AND 34-455, ARIZONA REVISED  
STATUTES; RELATING TO ENERGY COST SAVING MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-213.01, Arizona Revised Statutes, is amended to  
3 read:

4 15-213.01. Procurement practices: guaranteed energy cost  
5 savings contracts: definitions

6 A. Notwithstanding section 15-213, subsection A, a school district may  
7 contract for the procurement of a guaranteed energy cost savings contract  
8 with a qualified provider through a competitive sealed proposal process as  
9 provided by the procurement practices adopted by the state board of  
10 education. To the extent the qualified provider subcontracts with  
11 contractors who will be involved in any construction associated with the  
12 guaranteed energy cost savings contract, the qualified provider must follow  
13 the provisions of section 41-2533 in selecting these contractors.

14 B. A school district may enter into a guaranteed energy cost savings  
15 contract with a qualified provider if it determines that the amount it would  
16 spend on the energy cost savings measures recommended in the proposal would  
17 not exceed the amount to be saved in energy and operational costs within ~~ten~~  
18 TWENTY-FIVE years after the date installation or implementation is complete,  
19 if the recommendations in the proposal are followed.

20 C. The school district shall use objective criteria in selecting the  
21 qualified provider including the cost of the contract, the energy and  
22 operational cost savings, the net projected energy savings, the quality of  
23 the technical approach, the quality of the project management plan, the  
24 financial solvency of the qualified provider and the experience of the  
25 qualified provider with projects of similar size and scope. The school  
26 district shall set forth each criterion with its respective numerical  
27 weighting in the request for proposal.

28 D. In selecting a contractor to perform any construction work related  
29 to performing the guaranteed energy cost savings contract, the qualified  
30 provider may develop and use a prequalification process for contractors  
31 wishing to bid on this work. These prequalifications may require the  
32 contractor to demonstrate that the contractor is adequately bonded to perform  
33 the work and that the contractor has not failed to perform on a prior job.  
34 The qualified provider may use performance specifications in soliciting bids  
35 from contractors.

36 E. An in-depth feasibility study shall be performed by the selected  
37 qualified provider in order to establish the exact scope of the guaranteed  
38 energy cost savings contract, the fixed cost savings guarantee amount and the  
39 methodology for determining actual savings. This report shall be reviewed  
40 and approved by the school district prior to the actual installation of any  
41 equipment. The qualified provider shall transmit a copy of the approved  
42 in-depth feasibility study to the superintendent of public instruction.

43 F. The guaranteed energy savings contract shall require that a  
44 qualified provider perform an energy audit of the facility or facilities one  
45 year after the energy cost savings measures are installed or implemented and

1 every three years thereafter for the length of the contract. The qualified  
2 provider shall transmit a copy of the audit to the superintendent of public  
3 instruction. The qualified provider shall pay the cost of the audit. In  
4 determining whether the projected energy savings calculations have been met,  
5 the energy or operational cost savings shall be computed by comparing the  
6 energy baseline before installation or implementation of the energy cost  
7 savings measures with the energy consumed and operational costs avoided after  
8 installation or implementation of the energy cost savings measures. The  
9 qualified provider and the school district may agree to make modifications to  
10 the energy baseline only for any of the following:

- 11 1. Changes in utility rates.
- 12 2. Changes in the number of days in the utility billing cycle.
- 13 3. Changes in the square footage of the facility.
- 14 4. Changes in the operational schedule of the facility.
- 15 5. Changes in facility temperature.
- 16 6. Significant changes in the weather.
- 17 7. Significant changes in the amount of equipment or lighting utilized  
18 in the facility.

19 G. The information to develop the energy baseline shall be derived  
20 from actual energy measurements or shall be calculated from energy  
21 measurements at the facility where energy cost savings measures are to be  
22 installed or implemented. The measurements shall be taken in the year  
23 preceding the installation or implementation of energy cost savings measures.

24 H. When submitting a proposal for the installation of equipment, the  
25 qualified provider shall include information on the projected energy savings  
26 associated with each proposed energy cost savings measure.

27 I. A school district, or two or more school districts, may enter into  
28 an installment payment contract or lease-purchase agreement with a qualified  
29 provider for the purchase and installation or implementation of energy cost  
30 savings measures. The guaranteed energy cost savings contract may provide for  
31 payments over a period of not more than ~~ten~~ TWENTY-FIVE years. The contract  
32 shall provide that all payments, except obligations on termination of the  
33 contract before its expiration, shall be made over time.

34 J. The guaranteed energy cost savings contract shall include a written  
35 guarantee of the qualified provider that either the energy or operational  
36 costs savings, or both, will meet or exceed the costs of the energy cost  
37 savings measures within ~~ten~~ TWENTY-FIVE years. The qualified provider shall  
38 reimburse the school district for any shortfall of guaranteed energy cost  
39 savings on an annual basis.

40 K. The school district may obtain any required financing as part of  
41 the original competitive sealed proposal process.

42 L. A qualified provider that is awarded the contract shall give a  
43 sufficient bond to the school district for its faithful performance of the  
44 equipment installment.

1 M. When selecting subcontractors to perform construction work, the  
2 qualified provider is required to make public information in the  
3 subcontractor's bids only if the qualified provider is awarded the guaranteed  
4 energy savings contract by the school district.

5 N. This section does not apply to the construction of new buildings.

6 O. For the purposes of this section:

7 1. "Construction" means the process of building, altering, repairing,  
8 improving or demolishing any school district structure or building, or other  
9 public improvements of any kind to any school district real property.  
10 Construction does not include the routine operation, routine repair or  
11 routine maintenance of existing structures, buildings or real property.

12 2. "Energy baseline" means a calculation of the amount of energy used  
13 in an existing facility before the installation or implementation of the  
14 energy cost savings measures.

15 3. "Energy cost savings measure" means a training program or facility  
16 alteration designed to reduce energy consumption or operating costs and may  
17 include one or more of the following:

18 (a) Insulating the building structure or systems in the building.

19 (b) Storm windows or doors, caulking or weather stripping,  
20 multi-glazed windows or door systems, additional glazing, reductions in glass  
21 area, or other window and door system modifications that reduce energy  
22 consumption.

23 (c) Automated or computerized energy control systems.

24 (d) Heating, ventilating or air conditioning system modifications or  
25 replacements.

26 (e) Replacing or modifying lighting fixtures to increase the energy  
27 efficiency of the lighting system without increasing the overall illumination  
28 of a facility unless an increase in illumination is necessary to conform to  
29 the applicable state or local building code for the lighting system after the  
30 proposed modifications are made.

31 (f) Indoor air quality improvements to increase air quality  
32 that conform to the applicable state or local building code requirements.

33 (g) Energy recovery systems.

34 (h) Installing a new or retrofitting an existing day lighting system.

35 (i) Any life safety measures that provide long-term operating cost  
36 reductions and that comply with state and local codes.

37 (j) Implementing operation programs through education, training and  
38 software that reduce the operating costs.

39 4. "Guaranteed energy cost savings contract" means a contract for  
40 implementing one or more energy cost savings measures.

41 5. "Operational savings" means reductions in actual budget line items  
42 currently being expended or savings realized from the implementation or  
43 installation of energy cost savings measures.

44 6. "Qualified provider" means a person or a business experienced in  
45 designing, implementing or installing energy cost savings measures.

1           Sec. 2. Section 34-452, Arizona Revised Statutes, is amended to read:

2           ~~34-452.~~ Solar design standards for state buildings; energy life  
3                                   cycle costing

4           A. Capital projects as defined in section 41-790 including buildings  
5 designed and constructed by the department of administration, school  
6 districts, community college districts and universities and containing over  
7 six thousand square feet shall include a written evaluation of the following  
8 solar energy features:

- 9           1. Proper site orientation.
- 10           2. Utilization of active and passive solar energy systems for space  
11 heating.
- 12           3. Utilization of solar water heating.
- 13           4. Utilization of solar daylighting devices as defined in section  
14 44-1761.

15           B. Energy life cycle costing shall be used to evaluate all solar  
16 energy and energy conservation design, equipment and materials that are  
17 considered for constructing new state buildings and in the scheduled  
18 remodeling of existing state buildings. ~~Solar energy and energy conservation~~  
19 ~~design, equipment and materials shall be used if the simple payback is eight~~  
20 ~~years or less. If the useful life of a product is less than eight years, the~~  
21 ~~simple payback shall be equal to or less than the useful life of the product.~~

22           ~~C. The department of commerce energy office shall:~~

23           ~~1. For each of the eight fiscal years after completion of the project,~~  
24 ~~determine energy and cost avoidance for solar energy and energy conservation~~  
25 ~~design, equipment and materials installed in state buildings, using~~  
26 ~~monitoring verification standards that are accepted by the United States~~  
27 ~~department of energy. Energy and cost avoidance amounts shall be based on~~  
28 ~~preinstallation or preconstruction baseline energy usage versus energy usage~~  
29 ~~after solar and other energy and resource efficient design, materials or~~  
30 ~~equipment are incorporated into the state building.~~

31           ~~2. Prior to calculating the energy and cost avoidance amounts, present~~  
32 ~~its methodology for doing so to the joint legislative budget committee for~~  
33 ~~review.~~

34           ~~3. Report the amount determined in paragraph 1 of this subsection to~~  
35 ~~the governor's office of strategic planning and budgeting and the joint~~  
36 ~~legislative budget committee.~~

37           ~~D. The legislature shall appropriate from the fund or funds from which~~  
38 ~~the maintenance and operation budget is derived the amount of the annual cost~~  
39 ~~avoidance for each of the first eight fiscal years after completion of the~~  
40 ~~project as follows:~~

41           ~~1. Until the amount of the cumulative annual cost avoidance is equal~~  
42 ~~to the simple payback, no money shall be appropriated.~~

43           ~~2. When the amount of the cumulative annual cost avoidance is greater~~  
44 ~~than the simple payback, the appropriation is as follows:~~

~~(a) Forty per cent to the budget unit that operates the building to be used in the next fiscal year either to procure energy related equipment, supplies, disposal costs and capital improvements approved by the chief administrative officer of the agency or agencies and consistent with state and federal law or for purposes of any of the budget unit's programs as prescribed by law.~~

~~(b) Twenty per cent to the department of commerce for use by the energy office for verification and monitoring of energy conservation measures, project identification and implementation technical assistance.~~

~~E. The amounts prescribed by subsection D of this section are intended to supplement and not supplant any appropriation for energy conservation projects. These amounts shall be identified by footnote or other designation in the budget process as resulting from energy saving projects.~~

Sec. 3. Section 34-454, Arizona Revised Statutes, is amended to read:

34-454. Establishment and use of life cycle cost methods and procedures; definition

A. The director of the department of administration, in consultation with the department of commerce, shall establish practical and effective present value methods for estimating and comparing life cycle costs for state capital projects, using the sum of all capital and operating expenses associated with the energy system of the building involved over the expected life of the system or during a period of ~~fifteen~~ TWENTY-FIVE years, whichever is shorter, and using average fuel costs and a discount rate determined by the director. The director shall develop and prescribe the procedures to be followed in applying and implementing the methods and procedures established by this subsection.

B. The design of new capital projects and the application of energy conservation measures to existing capital projects shall be made using life cycle cost methods and procedures established pursuant to subsection A.

C. In leasing buildings preference shall be given to buildings which minimize life cycle costs.

D. For the purposes of this section, "life cycle cost" means the total cost of owning, operating and maintaining a building over its useful life, including such costs as fuel, energy, labor and replacement components determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease.

Sec. 4. Section 34-455, Arizona Revised Statutes, is amended to read:

34-455. Performance contracting; definition

A. The department of administration shall develop and implement a program to enter into performance contracts solely for the purpose of achieving energy savings as measured in dollars and benefits ancillary to that purpose. Each contract may be for a period of not more than ~~fifteen~~ TWENTY-FIVE years. The contract shall provide that the contractor bear all

1 costs associated with implementation of energy conservation measures to  
2 include audits, design equipment, purchase and installation, metering,  
3 interest on monies borrowed and training, and the contract shall include  
4 contractor profit. The contractor shall recover an amount not to exceed the  
5 summation of these costs and the agreed upon profit. Energy dollar savings  
6 realized as a result of a performance contract under this section shall be  
7 shared at a negotiated rate between the state and the contractor, until such  
8 time as the contractor has recovered the amount specified in the contract, at  
9 which time all savings shall accrue to the state. Interest rates charged on  
10 each contract shall be mutually agreed upon by the department of  
11 administration and the contractor. Contracts shall contain contingency  
12 provisions agreed upon by the department and the contractor for cases where  
13 measured energy dollar savings do not meet predicted energy dollar savings.

14 B. For the purposes of this section, "energy dollar savings" means a  
15 reduction in the cost of energy, from a base energy cost established through  
16 a methodology set forth in the contract, utilized in an existing or new state  
17 owned or leased building as a result of either:

18 1. The lease or purchase of operating equipment, improvements, altered  
19 operation and maintenance, technical services or renewable energy sources.

20 2. The increased efficient use of existing energy sources by  
21 cogeneration of heat recovery.